

REMARKS

Claims 1-26 have been presented for examination. Claims 1-26 have been rejected. Claim 8 is amended. Claims 1-26 remain in the Application. Reconsideration of the pending claims is respectfully requested in view of the above amendment and the following remarks.

I. Objections

Claim 8 stands objected to because of a superfluous article recited in “an operation mode of the *an* affected application program.” Applicants remove the article “an” as requested by the Examiner. Approval of the amendment is respectfully requested.

II. Claims Rejected Under 35 U.S.C. § 101

Claims 13-26 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter including intangible embodiments (e.g., carrier wave signals). Applicants amend paragraph 45 of the specification to remove the reference to carrier wave signals. Approval of the amendment is respectfully requested.

Claims 20-26 also stand rejected under 35 U.S.C. § 101. The Examiner indicates that the recited “means for” elements are directed at software (e.g., operating system) which is a non-statutory process in that it does not include the computer-readable medium needed to realize the functionality of the software. Applicants submit that the specification at paragraph 45 provides support for the computer-readable medium that realizes the functionality of the software. At paragraph 45, line 10, it is specifically disclosed that the methods [of FIG. 3 describing how operating system identifies and terminates the affected application] may be provided as a computer program product that may include a machine-accessible medium having stored thereon instructions. Thus, according to the specification, the instructions of the operating system software are stored on machine-accessible medium. By removing the reference to carrier wave signals as indicated above, instructions stored on the machine-accessible medium are statutory. Thus, in at least one embodiment, each of the “means” elements corresponds to operating system instructions stored on the machine-accessible medium to perform the functions recited by the corresponding means element. Software components are unquestionably statutory subject matter. 35 U.S.C. § 112 paragraph 6 permits claims in the form of means plus function without the recitation of structure. The fact that the means disclosed within the specification happens to be

software does not remove that means limitation from the scope of statutory subject matter. Accordingly, it is respectfully requested that the rejection of Claims 20-26 be withdrawn.

III. Claims Rejected Under 35 U.S.C. § 102

Claims 1-5, 7-17, 19-24 and 26 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,938,254 issued to Mathur et al. (“Mathur”). Applicants respectfully traverse the rejection.

To anticipate a claim, the Examiner must show that a single reference teaches each of the elements of that claim. Among other elements, Claim 1 recites:

“A method of terminating an affected application program thread, comprising:

receiving an indication of a hardware error associated with an application program thread;

determining the application program thread to be in a user operation mode; and

terminating the application program.”

Mathur discloses a method of controlling memory usage in a computer system having limited physical memory (Abstract). When the memory usage reaches a critical threshold, a user is prompted to select a currently executing application program to be terminated (col. 4, lines 56-59). Mathur does not disclose any indication of a hardware error in the above cited passage or elsewhere in the disclosure. The Examiner considers the disclosed “prompting the user” as the claimed “indication of a hardware error.” However, Mathur discloses that the user is prompted when the memory usage reaches a critical threshold, rather than when a hardware error occurs. Mathur contemplates a computing environment in which application programs compete for available memory (col. 4, lines 12-14). Thus, in the context of Mathur, the critical threshold is reached when the application programs overuse their memory resources and, as a result, one or more of the application programs are terminated to release a portion of the memory (Abstract). There is nothing in Mathur that discloses the claimed “indication of a hardware error” associated with an application program thread which results in the termination the application program.

Moreover, the Examiner relies on the selection operation made by the user after being prompted for teaching the claimed “user operation mode.” Even assuming for the sake of argument that the selection operation can be considered as a user operation mode, there is

nothing in Mathur that discloses the claimed determining operation, which determines whether the application program thread (associated to the hardware error) is in a user operation mode.

Analogous discussions apply to independent Claims 8, 13, and 20 and their dependent claims which incorporate the limitations thereof. Accordingly, reconsideration and withdrawal of the anticipation rejection of Claims 1-5, 7-17, 19-24 and 26 are requested.

IV. Claims Rejected Under 35 U.S.C. § 103(a)

Claims 6, 18 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Mathur over U.S. Patent No. 6,594,785 issued to Gilbertson et al. (“Gilbertson”). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness, the relied upon references must teach or suggest every limitation of the claim such that the invention as a whole would have been obvious at the time the invention was made to one skilled in the art. Claims 6, 18 and 25 depend from Claims 1, 13 and 20 and incorporate the limitations thereof. Thus, for at least the reasons mentioned above in regard to Claim 1, Mathur does not teach or suggest each of the elements of these dependent Claims.

Claim 6 modifies Claim 1 to include receiving information of a poisoned data address associated with the hardware error. The Examiner relies on Gilbertson for disclosing the claimed receiving information of the poisoned data address associated with hardware error. However, Gilbertson does not cure the deficiency of Mathur for failing to disclose “receiving an indication of a hardware error associated with an application program thread” and “determining the application program thread to be in a user operation mode” recited in base Claim 1. Gilbertson discloses hardware fault isolation and recovery. However, Gilbertson does not teach or suggest the concept of “a hardware error associated with application program thread. Gilbertson is also completely silent on “determining the application program thread to be in a user operation mode” in the entire disclosure. Thus, Mathur in view of Gilbertson does not teach or suggest each of the elements of Claim 1 and its dependent Claim 6.

Moreover, there is no motivation to combine Mathur with Gilbertson. Mathur discloses a method for reducing memory usage by terminating at least one application program. Gilbertson discloses hardware fault handling by poisoning specific memory locations. The two references propose distinctly different solutions for solving distinctly different technical problems. There is

no teaching or suggestion in either reference that the technical problem of Gilbertson may be solved by the solution proposed by Mathur. Thus, a skilled person would not even be motivated to combine the references. Thus, the proposed combination is inapposite.

Accordingly, reconsideration and withdrawal of the obviousness rejection of Claims 6, 18 and 25 are requested.

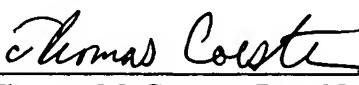
CONCLUSION

In view of the foregoing, it is believed that all claims now are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666.

Respectfully submitted,

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Dated: June 15, 2006



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Date